

Report of Stephen Chamberlin

*Lopez et al. v. Meyers G.M. Enterprises et al. dba Cajun Club*

### **3. Model & Talent Industry Standards and Other Reference Material Considered**

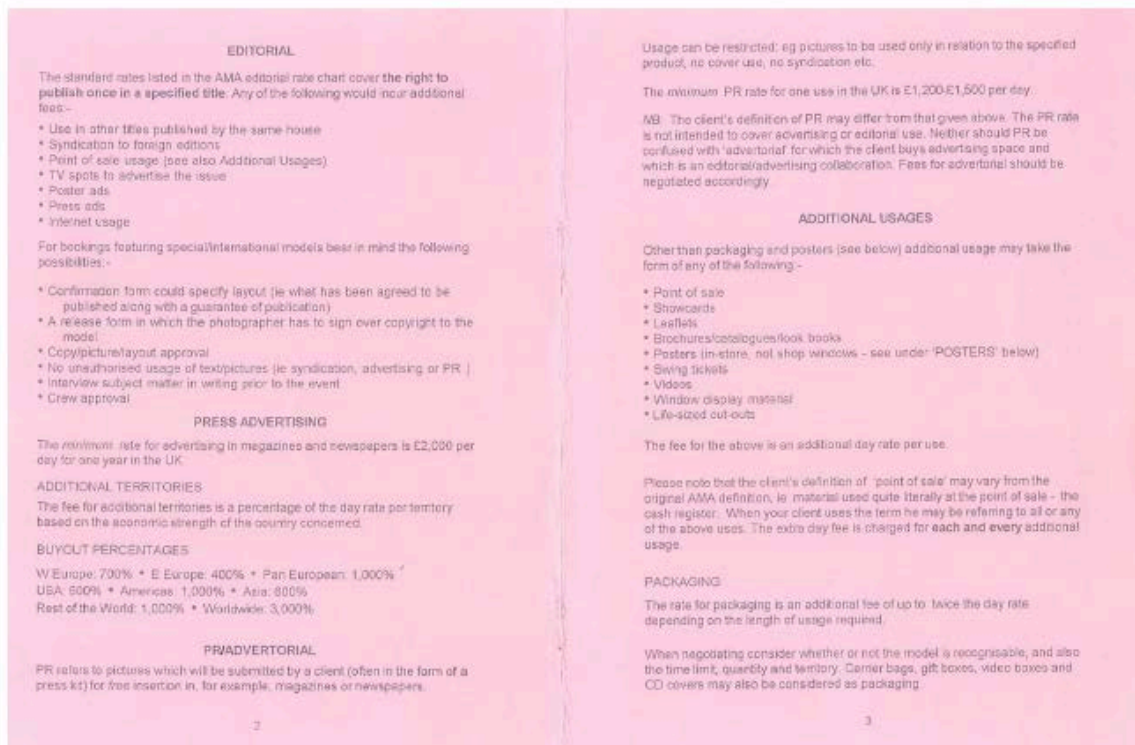
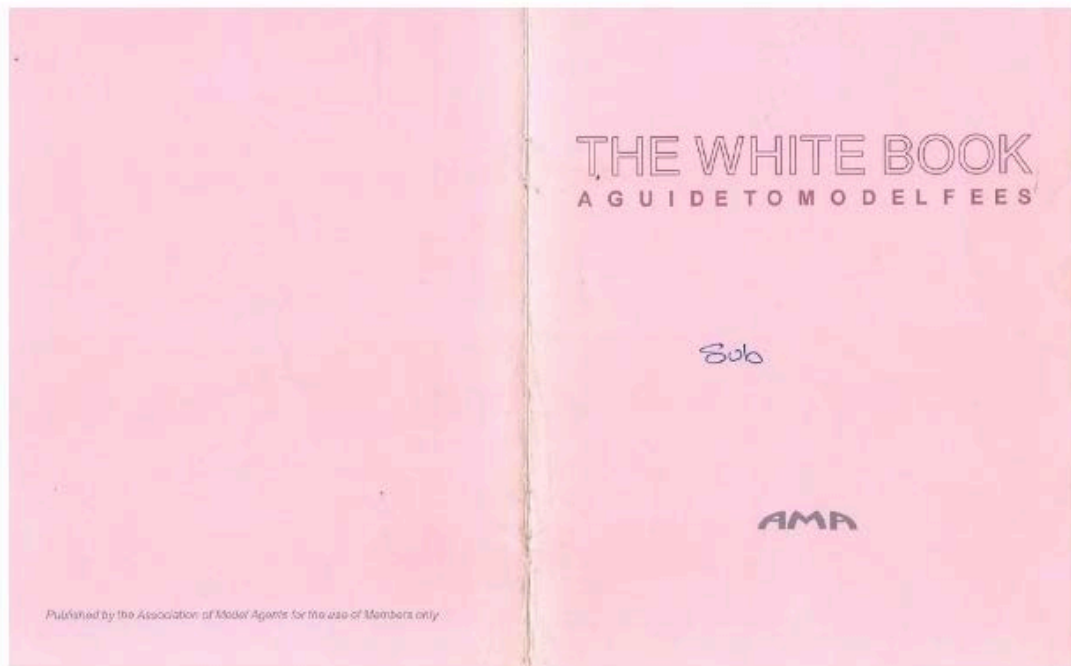
In addition to all of the above, I also consulted the following modelling industry reference material:

- The White Book Guide to Model Fees
- Numerous websites as listed in report regarding Model Industry Standards
- Celebrities' endorsement earnings on social media - Daily chart
- Intangible Asset & Intellectual Property Valuation/ A Multidisciplinary Perspective
- One Page Case Studies from Relatable - Global.pdf
- Right of Publicity — The Fashion Law

Excerpts of some of this reference materials are reproduced below:

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<p><b>POSTERS</b></p> <p>There are several types of posters: always find out which is required and negotiate accordingly:-</p> <ul style="list-style-type: none"> <li>* 48 sheet: an additional fee of up to twice the day rate. Ask about the number of sites required - a large number may suggest a higher fee.</li> <li>* Ad-shell, underground, public display posters (ie bus sides, airports, train stations, etc): an additional fee of 1.5 times the day rate.</li> <li>* Posters in shop windows: additional day rate.</li> </ul> <p><b>BOOK COVERS</b></p> <p>The minimum rate is £500 per day. This should be restricted to one print run of the book. Any reprints or additional territories will incur an additional fee. When negotiating a book cover fee, ask if the model will feature in any additional or promotional material and if so negotiate an appropriate fee.</p> <p><b>INTERNET</b></p> <ul style="list-style-type: none"> <li>* Selling off the page       <ul style="list-style-type: none"> <li>Catalogue: plus one day rate</li> <li>Advertising: plus 50% of day rate per targeted country</li> </ul> </li> <li>* Featured artists (not selling, but model featured significantly)       <ul style="list-style-type: none"> <li>Plus 50% of day rate (all uses)</li> </ul> </li> <li>* Incidental usage (including corporate/reference use)       <ul style="list-style-type: none"> <li>Plus 25% of day rate (all uses)</li> </ul> </li> <li>* Internet usage only       <ul style="list-style-type: none"> <li>One day rate</li> </ul> </li> <li>* TV commercials on internet       <ul style="list-style-type: none"> <li>UK: 400% of BSF for one year (Equity guidelines)</li> <li>Part-Europe buyout for one year: Big country 200% BSF, small 100% BSF.</li> <li>All TV rights can be offered for a small discount</li> </ul> </li> </ul> <p><b>AD:</b> Check duration - images get left; keep internet fee separate where possible  <b>BEWARE:</b> Other digital users (eg mobiles); Internet channels (eg Vogue.com/ Fashion TV); Multi-national usage (eg Gap)</p> <p><b>CATALOGUES</b></p> <p>Catalogue fees vary a great deal and it is not possible to cite an 'appropriate' fee. £800 per day is suggested as an absolute minimum.</p> <p>Off-page selling: where catalogue pictures are used for off-page selling, ie advertising the catalogue in magazines and newspapers, the suggested additional fee, per image, is from £500 up to the day rate.</p> <p>4</p>	<p>Following discussion with senior bookers The AMA has prepared a schedule of the model and usage fees which are currently deemed appropriate.</p> <p>Please remember, this is not a price list: fees available will depend on current market conditions and the client's requirements. For example additional uses attract an additional fee for each use but if several uses are required you may want to negotiate a 'deal'.</p> <p>When negotiating bear in mind how the model's association with the product and the exposure of the campaign will affect her career both present and future; make sure the final fee reflects this. If the job is likely to lessen her chances (however slightly) of being associated with prestigious clients or of obtaining more lucrative deals, this may imply a higher fee. However if it will have a more positive affect you can afford to be more flexible.</p> <p>If your model is a high flyer and likely to be considered for contracts, bear in mind that luxury brands tend to favour models who have not been associated with fast or more 'ordinary' products eg cars, household goods, middle market fashion and cosmetics.</p> <p>We refer below to the model's 'day rate'. A 'day' in this case refers to an 8-hour period between 9am and 6pm (usually 9am-5pm or 10am-6pm). An extra hour between 9am and 6pm is charged at the normal rate - (the appropriate overtime rate is charged only before 9am and after 6pm).</p> <p>A client booking by the day gets 8 hours including an hour for lunch; the hourly rate may be calculated by dividing the daily rate by 7.</p> <p>Fees quoted do not include any agency supplement</p> <p>All bookings are subject to AMA Terms and Conditions</p> <p>5</p>
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### Internet and e-commerce rates

#### Introduction

A lot of debate surrounds New Media and, at the present time, there are no clear guidelines - neither for clients, nor bookers. The AMA cannot set rates but, below, are some principles which bookers can consider in rate negotiations. For the most part, everything is linked to the day rate, or the advertorial rate, that a particular model can command. Thereafter, rates are based on multiples of that rate.

Clients will often plead ignorance as to the real usage of a model's 'internet' presence. Bookers should not accept this. Consider that Facebook and Twitter are now part of 65% of companies' marketing strategies. Clients do take it seriously and must be prepared to pay for the media.

Client websites			
Home page	No click through		Advertising day rate +
Home page	With click through	To e-commerce	Advertising day rate X 150%
Section page	No click through		Advertising day rate
Section page	With click through	To e-commerce	Advertising day rate X 100%
Thumb nails	With click through	To e-commerce	Catalogue day rate
3 <sup>rd</sup> party usage	ie on another client website	To e-commerce	Advertising day rate X 100%
Pop-up ad	Establish if it is a national or	Establish if	Advertising day rate as above,
Banner ad	international brand	e-commerce link	dependent on e-commerce

*Note: A home page or a section page is also called a 'landing page'*

Extra internet usage			
Web channels Treat as 'extra usage'	Channel	% of 'day rate'	Advertorial websites
	Face Book	100%	<i>Establish the nature of the website - e.g. media, advertorial, editorial and, above all, is it linked directly or indirectly to e-commerce</i>
	All other social networks	50%	
	Twitter	50%	
	4 square	50%	
	Apps	50%	<i>Look for an advertorial day rate, at least</i>
	Blogs	50%	
	e-mail	50%	









Shows	
Usage	Rate
On designer website and NO e-commerce	Show rate
Broadcast	Show rate + 50%
Direct to e-commerce	Catalogue rate
Indirect to e-commerce	100% of show rate

Virals	
<i>Look for minimum advertising day rate. Use TV usage as a guide</i>	
Usage	Rate
National brand	Advertising day rate
International brand	Advertising day rate X 2 +
<i>Check the client's strategy</i>	
TV commercial as viral - national brand	Day rate + 50%
TV commercial as viral - international brand	Day rate X 2 or more

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### Proper Engagement of Modeling Talent – Negotiation

 <p>Models do not sell their image rights for advertising.</p>	 <p>The basis of all negotiations is a day rate compensation for work by the model.</p>	 <p>All usages are negotiated prior to the shoot taking place.</p>	 <p>Once an image is on the Internet and associated with an advertiser, the number of views, "shares," downloads, and copies made is unknowable.</p> 
 <p>The proper way to obtain images for advertising is to negotiate a contract first between the model or agent and arrange a photo shoot.</p>	 <p>The day rate is based on the model's desirability and numerous factors such as demand for her services and relevance to product.</p>	 <p>Additional usages or extension of time periods of use are negotiated before coming in to effect.</p>	

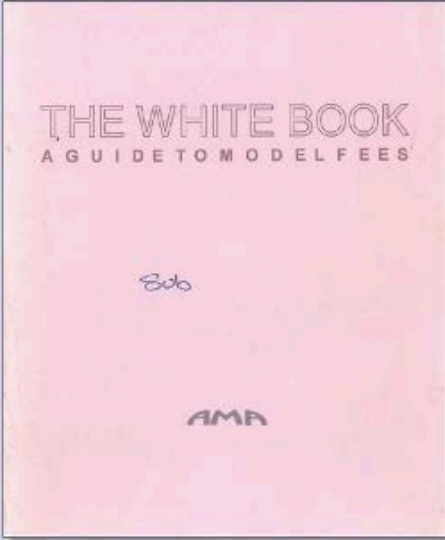
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### Association of Model Agents – The White Book,



0014.R01.6960.071819

The standard rates listed in the AMA editorial rate chart cover the right to publish once in a specified title. Any of the following would incur additional fees: -

- Use in other titles published by the same house
- Syndication to foreign editions
- Point of sale usage (see also Additional Usages)
- TV spots to advertise the issue
- Poster ads
- Press ads
- Internet usage

For bookings featuring special/international models bear in mind the following possibilities:-

- Confirmation form could specify layout (re what has been agreed to be published along with a guarantee of publication)
- A release form in which the photographer has to sign over copyright to the model
- Copy/picture/layout approval
- No unauthorised usage of text/pictures (ie syndication, advertising or PR )
- Interview subject matter in writing prior to the event
- Crew approval

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## Association of Model Agents – The White Book,



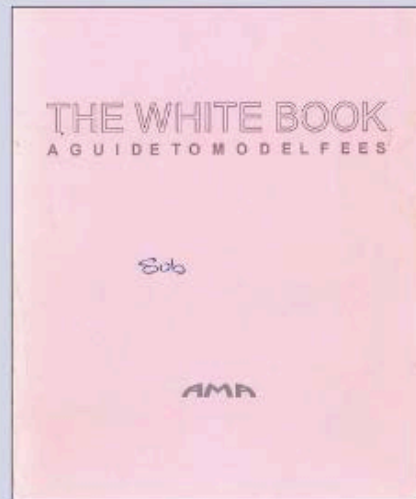
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Section page	With click through	To e-commerce	Advertising day rate X 100%
Thumb nails	With click through	To e-commerce	Catalogue day rate
3 <sup>rd</sup> party usage	ie on another client website	To e-commerce	Advertising day rate X 100%
Pop-up ad	Establish if it is a national or international brand	Establish if e-commerce link	Advertising day rate as above, dependent on e-commerce

Note: A home page or a section page is also called a 'landing page'

Extra internet usage			Advertisorial websites
Web channels Treat as 'extra usage'	Channel	% of 'day rate'	
	Face Book	100%	Establish the nature of the website - e.g. media, advertorial, editorial and above all, is it linked directly or indirectly to e-commerce
	All other social networks	50%	
	Twitter	50%	
	4 square	50%	
	Apps	50%	
	Blogs	50%	Look for an advertorial day rate, or less.
	e-mail	50%	

## Association of Model Agents – The White Book,



## Internet and e-commerce rates

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Industry Standards Reference websites.

<https://www.thebalancecareers.com/what-is-a-buyout-rate-in-modeling-2379446>



**careers** • Buyout Rate and Modeling

## Buyout Rate and Modeling

Pros and Cons of the Advance Payment


BY VANESSA HELMER | Updated November 11, 2019



Modeling Careers

HOW TO BECOME A MODEL

At some point in your [modeling career](#), you may be offered what's known as a "buyout." But what does it mean? What does it cover? And is it a good idea? It's an important term to become familiar with, so let's explore the details.



### What Is a Buyout?

In the modeling industry, a buyout is basically an advance payment for future use of a particular photo or set of photos. Instead of paying the model residuals (repeat payments each time the photo is used), the client and the agency negotiate a one-time fee that allows the client to use the photo(s) as many times as they'd like.

### For Freelance Models or Agency Models?

Buyouts are offered to both independent models and those under [agency representation](#). Models with agencies often come out on top, though, because agencies are familiar with these types of contracts and know how to negotiate top buyout rates and the fairest terms.

### Why Use a Photo Repeatedly?

Companies don't want to use the same old advertisements year after year, and readers don't want to see them either. So why bother with buyouts, you ask?


Well, buyouts can cover multiple types of media. Rather than using one shot for one type of ad, the client can negotiate the buyout to cover all sorts of media types, such as in-store marketing, digital ads, billboards, flyers, newsletters, brochures, bus ads...the list goes on and on.

### Will It Appear Somewhere I Don't Want It To?

No. The terms of the [buyout contract](#) should state that your photos will only be used by the original company to promote their services or products. They can't be sold to a third party or manipulated to change their intended purpose.

### How Much Are Buyout Fees?

Buyouts are usually paid in addition to the [day rate](#), but sometimes they're included. In general, the buyout rate works out to be about half of the original daily rate. So depending on the type of job, the client, and whether you're freelance or under agency representation, you could get paid anywhere from a few hundred to several thousand dollars.



**Important:** Agency-represented models will usually get a better deal than freelancers when negotiating a buyout.

### What Do They Cover?

The terms of a buyout vary. The buyout contract might be limited to a certain geographical region (only effective in the state of New York, for example) or to a certain time period (it's common for contracts to only last one or two years). However, it's possible for the terms to cover an unlimited-time, worldwide buyout. That means the client can use the photo in any country for as long as they want.



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<https://www.modlapp.com/usage>

### Pricing and agreeing on usage

Models and booking clients must agree on the usage terms for images and the fee associated with it. Traditionally, usage is calculated using the basic shoot fee (BSF); the total fee paid to the model for their time during the creation of the material. The BSF is multiplied upwards based on the usage requirements of the marketing material. Each type of media, territory, and timespan commands an industry-typical multiplier effect.

There are no laws on how much or little you can or should pay for usage, everything is based on industry standards and you simply have to agree on this with the model. However, models are well aware of these industry standards and experienced models understand the value of their image. This makes them reluctant to sign away control of their image without sufficient remuneration. Ultimately, you need a model to sign a document agreeing to the intended usage and you need to adhere to those terms. **The more you offer for this usage, the better the quality of model you will attract to your job.**

<https://aphotoeditor.com/2010/02/05/ad-agency-guide-to-photography-usage-terms/>

Generally, think of usage costs reflecting the amount of exposure a particular image may receive. The more exposure, the higher the price. Exact terminology may differ, but the semantics remain the same if all of the information is included in each negotiation. You can phrase it any way you want, but be clear about the INTENT by including information from all categories outline below. Talent usage is similar, but there are differences in how each medium is priced out: talent usage tends to be much more specific. Again, it is based on exposure. European terminology will differ from US terminology, particularly in the "Print" category. In Europe, "Print" includes anything that is not broadcast.

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<https://www.svenlerphotography.com/photography-blog/model-rates-how-much-do-agencies-charge>

**Usage Fees** Professional photographers charge usage and license fees for their images and so do agencies. These fees vary largely depending on a whole lot of factors, such as the agency, the market, the model, and of course where and how the image will be used. Naturally, the usage fee for a pamphlet for medium-sized company will be significantly lower than the usage fee for an international ad campaign. If you plan to use the pictures for an ad campaign, most agencies will also expect you to inform them about the nature of the product and/or the brand. There is usually no usage fee if you just want to use the pictures for your Portfolio.

**Other Terms and Conditions** Alright, once you negotiated all of the above, there are still some things that you should negotiate with the agency beforehand. Remember, modeling and photography is a business and you should treat it as such. This especially holds true when it comes to binding contracts. Depending on the agency, many of the following terms will not be negotiable.

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<https://aphotoeditor.com/2010/02/05/ad-agency-guide-to-photography-usage-terms/>

#### **TIME PERIOD or LENGTH OF TIME**

This is the length of time an image or images will be used: one year, two year, one time, etc.. It is best to specify "from date of first use" when negotiating a contract for an image. Standard use generally defaults to one year use {from shoot date} in a specific medium unless terms are otherwise negotiated.

#### **RIGHTS/QUANTITY**

This is the number of times within the time period that the image will be used.

**Limited:** A limited number of times such as "2 insertions" or "run of 5,000" within the time period purchased. By the time you reach multiple insertions in publications such as People or USA Today, you may as well buy unlimited rights.

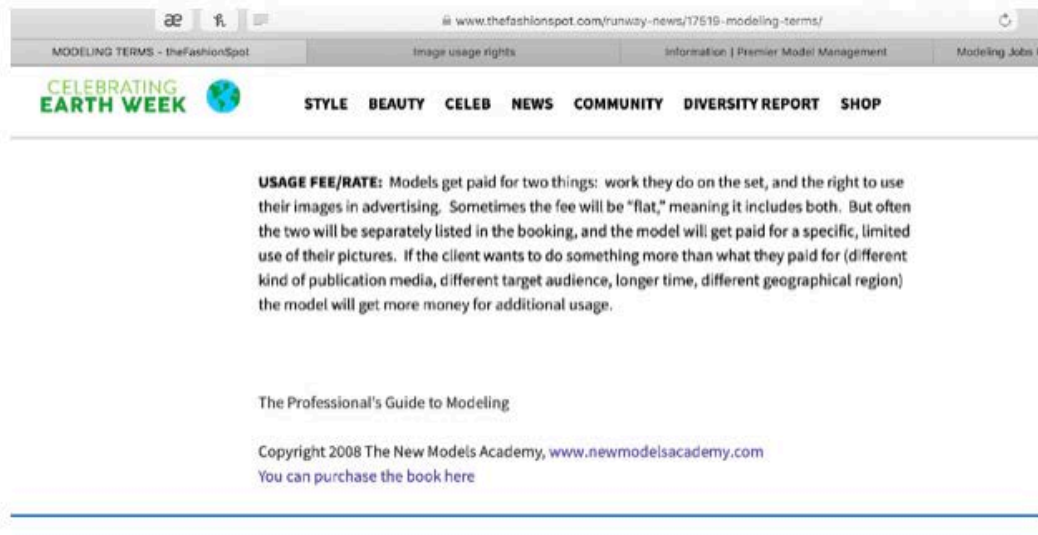
**Unlimited:** Can be used an unlimited (unspecified) number of times within the time period purchased. This does not allow a transfer of copyright to you or to your client, nor does it mean the same as "unlimited time." You both have only the rights to use the image, not to resell it or allow a third party to use it.

**Total Buyout:** You have purchased the copyright to the image and have full rights to do whatever you want with the image. You own it, basically. In the case of illustration, you own the rights, but you do not necessarily own the final art. That usually requires a very specific, carefully worded purchase agreement. Expect to pay dearly for this usage!

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<https://www.thefashionspot.com/runway-news/17519-modeling-terms/>



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<http://www.themodels.com.au/pages/terms-and-conditions>  
<https://www.smgmodels.com/page/478/>

## RATES

Quotes provided by the Agency will include shoot time only with usage quoted separately. A Booking Fee will also apply and be quoted.

## USAGE

Additional fees are payable for the right to use the talent / model's image or reproductions / adaptations of, or drawings derived from that image, or any other representation of it, either complete or in part whether alone or in conjunction with any wording or other images, photographs, drawings or anticipated purposes which are in addition to and outside the scope of the initial permitted use, details of which are set out in the booking confirmation form, e.g. advertising, packs, posters, showcards, billboards, record covers, swing tickets etc. For the avoidance of doubt, additional fees are payable for the right to use the talent / model's image online or in any digital media including but not limited to Twitter, Facebook, Tumblr, Instagram, MySpace, YouTube, Flickr, Blogs or other social networking websites or media.

Unless otherwise agreed, the additional fees cover the right to use one image for one year from the date of booking, in Australia only, for the permitted use or uses or purposes agreed between the Agency and the client. Under no circumstances will each additional usage fee be less than the model's advertised day rate as determined by the Agency unless determined otherwise by the Agency in its absolute discretion.

Additional fees are also payable, and subject always to the Agency's prior consent, for the right to use the talent / model's image or reproductions etc, as set out above for all known or anticipated territories other than Australia.

It is the client's responsibility to outline full usage requirements at the time of booking. It is also the client's responsibility to ensure any creatives and brands associated with the booking are aware of these terms & conditions. Any and all additional usage must be negotiated with the Agency. The Agency reserves the right to refuse the release of images for any use for any reason including rollovers of existing print and television campaigns. Any image used without written authorisation or prior approval from the Agency will be deemed unauthorised usage and will be subject to penalty.



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## 8. ADDITIONAL FEES

**TO BE AGREED AT THE TIME OF THE BOOKING OR BEFORE ANY ADDITIONAL USAGE IN ACCORDANCE WITH SECTION 3.1**

### 1. USAGE

Additional fees are payable for the right to use the model's image or reproductions, or adaptations of, or drawings derived from that image, or any other representation of it, either complete or in part whether alone or in conjunction with any wording or other images, photographs, drawings or anticipated purposes which are in addition to and outside the scope of the initial permitted use, details of which are set out in the booking confirmation form, e.g. packs, posters, showcards, record covers, swing tickets etc. For the avoidance of doubt, additional fees are payable for the right to use the model's image or reproductions, or adaptations of, or drawings derived from that image, or any other representation of it, either complete or in part whether alone or in conjunction with any wording or other images, photographs, drawings online or in any digital media including but not limited to Twitter, Facebook, MySpace, YouTube, Flickr, Blogs or other social networking websites or media. Unless otherwise agreed, the additional fees cover the right to use one image for one year from the date of booking, in the United Kingdom only, for the permitted use or uses or purposes agreed between IMG and the client. Under no circumstances will each additional usage fee be less than the model's advertised day rate as determined by IMG unless determined otherwise by IMG in its absolute discretion.

### 2. TERRITORY

Additional fees are also payable, and subject always to IMG's prior consent, for the right to use the model's image or reproductions etc, as set out in section 3.1 above for all known or anticipated territories other than the United Kingdom. Unless otherwise agreed the additional fees cover the right to use one image for one year or one season (as determined by IMG at the date of booking and as detailed on the booking confirmation form) from the date of booking, in the territory or territories agreed and stipulated on the booking form. Under no circumstances will each usage fee be less than the model's advertised day rate as determined by IMG unless determined otherwise by IMG in its absolute discretion.

<https://www.imgmodels.com/special-pages/terms-conditions>

**“Under no circumstances will each additional usage fee be less than the model's advertised day rate as determined by IMG unless determined otherwise by IMG in its absolute discretion.”**

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<https://www.modelmanagement.com/modeling-advice/model-glossary/>

#### U

Usage – Models get paid for each different medium in which their photograph is used. These different mediums, or usages, may include: consumer magazines, trade magazines, product packaging, print ads, bus ads, subway ads, billboards, magazine covers, direct mail, magazine editorials, posters, catalogues, brochures, point-of-purchase (point-of-sale or p-o-p), annual reports, book covers, kiosk, duratrans (those big portable billboards that are towed around behind trucks), newspapers, etc. The model receives an additional fee for each usage the client buys. Usages also vary according to time and region. The longer the ad runs and the more markets in which it appears, all drive up the model's fee. The largest usage is the unlimited time usage, worldwide buyout. That means the client can plaster the photograph across every city in the world in every possible usage until the end of time.

<https://www.premiermodelmanagement.com/terms/>

#### 4. Usage.

An additional rate is payable for any use of photographs, or reproductions or adaptations thereof, or drawings therefrom, either complete or in part, alone or in conjunction with any wording or drawings. The "Usage" must be explicitly granted (as agreed on our confirmation of booking form and also specified on the relevant invoice – N.B. one image only may be used, unless otherwise agreed in writing) and defines the TYPE of usage, together with the TERRITORIES in which such usage is permitted and the DURATION of such usage. Under no circumstances will the basic usage fee be less than the Talent's advertising day rate. All fees must be paid PRIOR to any use of photographs for any purpose whatsoever. Usage fees remain payable, even in the event that the Usage purchased is not actually exercised.

#### 5. Additional Usage.

An additional rate is payable for any additional (e.g. additional TYPES of usage, additional TERRITORIES or extended DURATION) Usage of the photographs, or reproductions or adaptations thereof, or drawings therefrom, either complete or in part, alone or in conjunction with any wording or drawings, other than Usage already agreed ("Additional Usage Rate"). The CLIENT is responsible for notifying Premier of any additional Usage requirement and negotiating (only with Premier) the Additional Usage Rate payable in respect of such additional Usage, PRIOR to any such additional Usage taking place.